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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,691	12/20/2000	Koichi Shibata	500.39409X00	3285

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EXAMINER

DALENCOURT, YVES

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,691

Applicant(s)

SHIBATA ET AL.

Examiner

Yves Dalencourt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to communication filed on 12/20/2000.

Priority

The status of the cross-reference mentioned on page one of the specification needs to be updated.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1 - 8, drawn to a video server for distributing a digitized video content, classified in class 709, subclass 225.

Group II. Claims 9 and 10, drawn to a method of transferring image information in an asynchronous communication network, classified in class 709, subclass 229.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the image information from the video server can be transmitted to the terminal without any conditions. The subcombination has separate utility such as being used in any other handheld devices capable of transmitting image information.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Carl I. Brundidge on 07/21/04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1 - 8.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 9 and 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7, and 8 recite the limitation "the HTTP protocol in (claim 1, line 8; claim 7, line 6; claim 8, line 14). There is insufficient antecedent basis for this limitation in the claims.

The examiner is aware that the priority date of this application beats the filing date of the Patent Application Publication No. 2002/0049977 A1. However, Applicants are required to send a certified translation of the Japanese Patent Application No. 2000-046997 in order to claim right of priority. By doing so, the prior art No. 2002/0049977 A1 uses in this office action will be withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (US 2002/0049977; hereinafter Miller).

Regarding claims 1 - 2, 6 - 8, Miller teaches a video server for distributing a digitized video content (see fig. 1; abstract), comprising means for determining whether or not a video content requested from a terminal is stored in said video server (para. 0012, lines 6 – 8; Miller discloses that the local center video server 103 determines that the requested video content is located at the centralized center 104); means for transmitting a transmission request to another video server for transmitting said video content in accordance with an IP protocol when the video content requested by the terminal is not stored in said video server (para. 0012, lines 8 - 14; Miller discloses that the local center video server 103) forwards a request through local center router 105, which sends the request to the centralized center video server 106); and means for receiving the video content transmitted from the other video server in accordance with the IP protocol, and transmitting the video content to said terminal in accordance with IP multicast (para. 0002; para. 0012, lines 14 – 21; Miller discloses that content is received at the local center via the local router 102 and sent via the local video server 103 to the local center video cache 108, which further transmitted the video content to the end user).

Miller teaches substantially all the limitations including the use of an Internet Protocol (IP) backbone transport (see para. 0002), but fails to explicitly teach that the transmission/reception of the video content is in accordance with HTTP protocol.

However, " Official Notice " is taken that the concept and advantages of using an HTTP protocol for transmitting/receiving video content is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miller's device by using an HTTP protocol for transmitting/receiving video content since such protocol is a standard mechanism by which information is transported over TCP/IP compatible networks, such as the Internet, Intranets, and Extranets.

Regarding claim 3, Miller teaches a video server for distributing a digitized video content (see fig. 1; abstract), which further comprises means for storing and managing the video content received from the other video server (108, fig. 2; para. 0012, lines 15 – 16).

Regarding claim 5, Miller teaches a video server for distributing a digitized video content (see fig. 1; abstract), wherein said means for transmitting a video content to the terminal in accordance with the HTTP protocol establishes a plurality of logical transmission paths between said terminal and said video server, and utilizes said plurality of logical transmission paths for transmitting image information (see fig. 1; para. 0018).

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: As specifically claimed, the art of record fail to teach a transmitting means that

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includes a plurality of buffers, buffer selecting means, and a reference time generator; said transmitting means detects a random access point in image information, and stores the image information up to the next random access point in one of said plurality of buffers; and said buffer selecting means selects, from among said plurality of buffers, image information which has not been transmitted and has a time stamp equal to or smaller than a reference time generated by said reference time generator, and indicates the selected image information to said transmitting means.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Phaltankar (US Patent Number 6,714,549) discloses a high resiliency network infrastructure.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (703) 308-8547. The examiner can normally be reached on M-TH 7:30AM - 6: 30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt

July 21, 2004


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